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No. 10-752

Supreme Court, U.S.
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In The

Supreme Court of the United States

DUSTIN DRESSNER,

Petitioner,

v.

STATE OF LOUISIANA,

Respondent.

On Petition For A Writ Of Certiorari To The Louisiana Supreme Court

AMICUS BRIEF IN SUPPORT OF PETITIONER BY THE LOUISIANA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

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INTERESTS OF *AMICI CURIAE*[1]

The Louisiana Association of Criminal Defense Lawyers (LACDL) is a voluntary professional organization of private and public defense attorneys practicing in Louisiana. LACDL counts among its members the vast majority of Louisiana's criminal defense bar. LACDL's mission includes the protection of individual rights guaranteed by the Louisiana and United States Constitutions. LACDL has given particular attention to discrimination based upon race and gender in jury selection and composition, providing an *amicus* brief to this Court in *Snyder v. Louisiana*.

LACDL has an interest separate from the Petitioner and Respondent. *Amicus curiae* respectfully suggest that this Court grant the Petition to consider in full the Louisiana court's application of *Batson v. Kentucky*.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

Previously the LACDL provided this Court with an *amicus* brief in support of the petition for certiorari

[1] Pursuant to this Court's Rule 37, *amici* state that no counsel for any party authored this brief in whole or in part, and no person or entity other than *amici* made a monetary contribution to the preparation or submission of the brief. Counsel of record for all parties were timely notified and have consented to the filing of this brief.

arising from the *Batson*[2] claim in *Snyder v. Louisiana*, 552 U.S. 472 (2008). In that brief, *amici* sought to assist the Court by explaining the historical failure of Louisiana reviewing courts to identify and remedy racial discrimination in jury selection.

This Court granted certiorari in *Snyder* and ultimately granted relief, finding that the trial judge had committed clear error in denying Mr. Snyder's *Batson* challenge. This should have been a watershed moment in Louisiana jurisprudence as this Court's finding contrasted so markedly with the findings of the Louisiana Supreme Court which had twice found that not only was there not clear error but that it agreed with the trial court.

Unfortunately, this Court's opinion in *Snyder* has not served as a watershed in Louisiana's *Batson* jurisprudence and since the *Snyder* opinion, matters have become, if anything, worse.

In this brief *amici* updates the review of appellate practice in Louisiana by studying the cases decided since *Snyder* was announced. That review shows that no defendant has received relief under *Batson*, that there has been an apparent explosion in "reverse-*Batson*" rulings involving findings of discrimination against white jurors by defense lawyers, and that in the one case where *Batson* relief was temporarily granted by a Louisiana appellate court

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[2] *Batson v. Kentucky*, 476 U.S. 79 (1986).

after *Snyder*, the Louisiana Supreme Court reversed the grant of relief without briefing or argument.

The review also demonstrates that the problems with Louisiana's *Batson* jurisprudence stretch much further than the number of denials. In the wake of *Snyder*, the Louisiana Supreme Court has developed a form of analysis in relation to statistical and historical evidence of discrimination at odds with this Court's holdings and fatal to the use of such evidence in *Batson* claims. Rather than encouraging increased and meaningful scrutiny in the *Batson* process following *Snyder*, the Louisiana Supreme Court has endorsed patently inadequate review and has elevated appellate deference to a point that renders review meaningless. Rather than *Snyder* opening the door to a more *Batson* friendly approach in Louisiana, it has seen an explosion of reverse-*Batson* cases.

From the outset, Louisiana has had trouble giving effect to the reach of the Fourteenth Amendment's Equal Protection Clause to jury selection.[3]

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[3] A little over a decade after *Strauder v. W. Va.*, 100 U.S. 303 (1880) the Louisiana Supreme Court decided *State v. Joseph*, 45 La. Ann. 903 (La. 1893), rendering *Strauder* virtually meaningless. Five years after that Louisiana passed its infamous 1898 constitution, disenfranchising African Americans and introducing a majority verdict system to ensure that *Strauder* did not undermine white decision making on juries. *Lee v. Louisiana*, 07-1523, *Brief of Amicus Curiae*, Louisiana Criminal Defense Attorneys (concerning Louisiana's non-unanimous jury verdicts, noting the avowed intent of the leaders of the 1898 Louisiana Constitutional Convention was to shroud the administration of

(Continued on following page)

The Louisiana Supreme Court has a regrettable history in this regard[4] and unfortunately that history of recalcitrance appears to be repeating itself.

This Court should grant certiorari to review the decision in this case and to finish the work it started in *Snyder* – the work of ensuring that *Batson*'s prescription and this Court's holdings reach into Louisiana.

ARGUMENT

I. The review of Louisiana appellate jurisprudence conducted in support of the grant of certiorari in *Snyder*

Prior to the grant of certiorari in *Snyder*, *amici* reviewed the appellate practice in Louisiana in *Batson* cases. In its *amicus* brief in support of the grant of certiorari in *Snyder*, *amici* reported several disturbing findings.

First, that since *Batson* was announced, the intermediate appellate courts in Louisiana had reviewed 178 trial court denials of defense *Batson* challenges and have granted relief to the defendant in only four

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justice with race-neutral language that effected and ensured white hegemony).

[4] *See, for example*, *State v. Pierre*, 189 La 764, 771-2 & 775 (La. 1938), *rev'd*, *Pierre v. Louisiana*, 306 U.S. 354 (1939); *State v. Eubanks*, 232 La. 289, 296 (La. 1957), *rev'd*, *Eubanks v. Louisiana*, 356 U.S. 584, 586 (1958).

of those cases (with one of those subsequently reversed by the Louisiana Supreme Court).[5]

Second, that since *Batson* there had been thirty-two cases where the Louisiana Supreme Court had considered a defendant's *Batson* challenges and reached the merits of those claims and that in that history, the Louisiana Supreme Court had granted relief in only two cases.[6]

Third, that there were far more reported cases in which *Batson* has been successfully used to prevent defense strikes of white prospective jurors than state strikes of black jurors.[7] There were thirteen findings of *Batson/McCollum*[8] violations affirmed by the intermediate appellate courts and the Louisiana Supreme Court involving defense strikes of white prospective jurors.[9] There was one appellate case upholding a finding of defense discrimination against a black juror.[10]

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[5] *Snyder v. Louisiana*, 2006 U.S. Briefs 10119, *Brief of Amicus Curiae, Louisiana Association of Criminal Defense Lawyers*, at 5.

[6] *Id.*

[7] *Id.* at 14.

[8] *Georgia v. McCollum*, 505 U.S. 42 (1992) (white defendant seeking to strike black jurors).

[9] *Snyder v. Louisiana*, 2006 U.S. Briefs 10119, *Brief of Amicus Curiae, Louisiana Association of Criminal Defense Lawyers*, at 14.

[10] *Id.*

II. A review of Louisiana appellate jurisprudence conducted since this Court decided *Snyder* shows that matters have become worse, not better

In *Snyder*, even after the remand to consider the case in light of *Miller-el v. Dretke*, 545 U.S. 231 (2005), the Louisiana Supreme Court afforded excessive deference to the trial court and a willingness to accept implausible reasons from the prosecutor that were at odds with his treatment of similarly placed jurors.

This court intervened and provided a model for analysis of *Batson* claims by reviewing courts. While emphasizing the "pivotal role" of trial courts in resolving *Batson* claims, this Court made it clear that a reviewing court should assess the plausibility of the reasons offered and cease its deference to the trial court where the lower court accepted implausible reasons.[11] This Court also made it clear that the implausibility of a proffered reason should be informed by a comparative analysis,[12] which is at the heart of so much equal protection jurisprudence.[13]

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[11] *Snyder*, 552 U.S. at 477, 479-83 (the state's implausible explanation for striking Mr. Brooks "fails even under the highly deferential standard of review that is applicable here").

[12] *Id.* at 483-85.

[13] *See Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000) ("Our cases have recognized successful equal protection claims brought by a 'class of one,' where the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment.").

Finally, this Court emphasized that the offering of a pretextual reason gives rise to an inference of discrimination.[14]

Given the stark difference between the analysis previously favored by Louisiana courts and the analysis demonstrated by this Court in *Snyder*, one would expect the *Snyder* decision to have operated as a watershed in Louisiana *Batson* jurisprudence. Unfortunately, it has not.

Since *Snyder* was announced by this Court, there has not been a single defendant who has obtained relief arising from a *Batson* claim in Louisiana.

The closest any defendant came was Lawrence Jacobs, an African American defendant tried in Jefferson Parish, the jurisdiction of both the *Snyder* and *Dressner* cases. Indeed, Lawrence Jacobs was tried by one of the same prosecutors who tried the *Dressner* case and the trial judge was the same judge as in the *Snyder* case.[15] In *Jacobs*, the State used seven of eight peremptory challenges to strike six black prospective jurors and one Hispanic prospective

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[14] *Snyder*, 552 U.S. at 484. ("The prosecution's proffer of this pretextual explanation naturally gives rise to an inference of discriminatory intent.")

[15] Judge Kernan Hand presided over both *Jacobs* and *Snyder*. *State v. Snyder*, 874 So. 2d 739, 739 (2004); *State v. Jacobs*, 13 So. 3d 677, 677 (La. App. 5 Cir. 2009). Terry Boudreaux prosecuted both cases. *Id.*; *State v. Dressner*, ___ So. 3d ___ (La. 2010); 08-1366 (La. 07/06/10); 2010 La. LEXIS 1656, Pet. App. A; *Jacobs*, 32 So. 3d 227.

juror from two separate voir dire panels.[16] The Fifth Circuit Court of Appeal for Louisiana granted *Batson* relief, citing extensively to *Snyder*.[17] The Louisiana Supreme Court granted the state's application for review and without ordering briefing or argument issued a *per curiam* reversing the decision of the Court of Appeal.[18]

Looking to all of the post-*Snyder* appellate cases involving step three of the *Batson* analysis, the information supplied in the *Snyder amicus* brief may be updated as follows.[19]

First, since *Snyder* was announced, the intermediate appellate courts in Louisiana have reviewed 15 trial court denials of defense *Batson* challenges and have granted relief to the defendant in only one case (as discussed above, relief was subsequently reversed by the Louisiana Supreme Court).[20] A Court of Appeal

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[16] *State v. Jacobs*, 13 So. 3d 677, 683 (La. App. 5 Cir. 2009).

[17] *Id.* at 686-87, 694.

[18] *State v. Jacobs*, 32 So. 3d 227 (La. 2010) (per curiam), *reh'g denied*, 37 So. 3d 994 (La. 2010) (per curiam).

[19] There have also been some cases post-*Snyder* dealing with step one of the *Batson* analysis but they are beyond the scope of this brief.

[20] *State v. Sarpy*, No. 10-700, 2010 La. App. LEXIS 1650 (La. App. 3 Cir. Dec. 8, 2010); *State v. Williams*, No. 45,755-KA, 2010 La. App. LEXIS 1536 (La. App. 2 Cir. Nov. 3, 2010); *State v. Kidd*, No. 45,638-KA, 2010 La. App. LEXIS 1509 (La. App. 2 Cir. Nov. 3, 2010); *State v. Horn*, No. 45,706-KA, 2010 La. App. LEXIS 1502 (La. App. 2 Cir. Nov. 3, 2010); *State v. Bess*, 47 So. 3d 524 (La. App. 2 Cir. 2010); *State v. Plauche*, 32 So. 3d 852 (La. App. 3 Cir. 2010), *writ denied*, 45 So. 3d 1070 (La. 2010);

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also granted interlocutory relief in one case, issuing an emergency mid-trial ruling reversing a trial court finding of a *Batson* violation.[21]

Second, since *Snyder* there have been two cases where the Louisiana Supreme Court has considered a defendant's *Batson* challenges and reached the merits of those claims.[22] In that history, the Louisiana Supreme Court has granted relief in zero cases, actually reversing appellate relief in one of them.

Third, there are now even more reported cases in which *Batson/McCollum* has been successfully used to prevent defense strikes of white prospective jurors. There were six findings of *Batson/McCollum* violations affirmed by the intermediate appellate courts and the Louisiana Supreme Court involving defense

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State v. Wilson, 28 So. 3d 394 (La. App. 5 Cir. 2009), *writ denied*, 38 So. 3d 299 (La. 2010); *State v. Holder*, 25 So. 3d 920 (La. App. 2 Cir. 2009), *writ denied*, *State ex rel. Johnson v. State*, No. 2009-KH-2788, 2010 La. LEXIS 2854 (La. Dec. 10, 2010); *State v. Collins*, 12 So. 3d 1069 (La. App. 2 Cir. 2009); *State v. Jacobs*, 13 So. 3d 677 (La. App. 5 Cir. 2009), *vacated*, 32 So. 3d 227 (La. 2010) (per curiam); *State v. Palms*, No. 08-553, 2008 La. App. Unpub. LEXIS 676 (La. App. 3 Cir. 2008), *writ denied*, 36 So. 3d 241 (La. 2010); *State v. Brastfield*, 3 So. 3d 9 (La. App. 4 Cir. 2008); *State v. Jackson*, No. 08-428, 2008 La. App. Unpub. LEXIS 588 (La. App. 3 Cir. 2008); *State v. Harmon*, No. 08-454, 2008 La. App. Unpub. LEXIS 580 (La. App. 3 Cir. Nov. 5, 2008).

[21] *Holder*, 25 So. 3d 920.

[22] *State v. Dressner*, ___ So. 3d ___ (La. 2010); 08-1366 (La. 07/06/10); 2010 La. LEXIS 1656, Pet. App. A; and *Jacobs*, 32 So. 3d 227.

strikes of white prospective jurors.[23] One of those was in the *Dressner* case.

This review shows no positive change in the protection afforded by *Batson* to defendants in Louisiana. Indeed, there has been an explosion in reverse-*Batson* cases, six such cases in the two years since *Snyder*, in comparison to thirteen in the fourteen years before the *Snyder amicus*.[24]

As discussed below, these dismal statistics are matched by an equally dismal *Batson* jurisprudence in Louisiana that is antagonistic to the meaningful

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[23] *State v. Breaux*, No. 45,676-KA, 2010 La. App. LEXIS 1506 (La. App. 2 Cir. Nov. 3, 2010); *State v. Nelson*, 41 So. 3d 642 (La. App. 2 Cir. 2010); *State v. Prejean*, No. 2009 KA 0878, 2009 La. App. Unpub. LEXIS 639 (La. App. 1 Cir. Oct. 27, 2009); *State v. Jacobs*, 6 So. 3d 315 (La. App. 3 Cir. 2009); *Wyatt v. Hendrix*, 998 So. 2d 233 (La. App. 2 Cir. 2008); *State v. Jackson*, No. 08-428, 2008 La. App. Unpub. LEXIS 588 (La. App. 3 Cir. 2008).

[24] *State v. Tyler*, 723 So. 2d 939 (La. 1998); *State v. Dunn*, 831 So. 2d 862 (La. 2002); *State v. Scott*, 921 So. 2d 904 (La. 2006); *State v. Spencer*, 631 So. 2d 1363, 1365 (La. App. 5 Cir. 1994), *writ denied*, 649 So. 2d 400 (La. 1995); *State v. Moore*, 640 So. 2d 561 (La. App. 3 Cir. 1994); *State v. Ford*, 643 So. 2d 293 (La. App. 2 Cir. 1994); *State v. Payne*, 657 So. 2d 531 (La. App. 4 Cir. 1995); *State v. Ball*, 748 So. 2d 1239, 1241 (La. App. 2 Cir. 1999); *State v. Wade*, 832 So. 2d 977 (La. App. 2 Cir. 2002), *writ denied*, 840 So. 2d 1213 (La. 2003); *State v. White*, 850 So. 2d 751 (La. App. 2 Cir. 2003), *writ denied*, 872 So. 2d 510 (La. 2004); *State v. Stewart*, 866 So. 2d 1016 (La. App. 5 Cir. 2004), *writ denied*, 876 So. 2d 832 (La. 2004); *State v. Singleton*, 953 So. 2d 168 (La. App. 3 Cir. 2007); cf. *State v. Wilson*, 632 So. 2d 861 (La. App. 2 Cir. 1994) (Defense challenge of two white jurors disallowed; affirmed on appeal as to one of the jurors, reversed as to the other).

application of principles of equal protection to the jury selection process.

III. The Louisiana Supreme Court has adopted a method for considering historical and statistical evidence of discriminatory intent at odds with *Miller-el* and the other holdings of this Court

History and statistics may not be sufficient to establish on their own that peremptory strikes in *Dressner* were raced based. But they provide powerful circumstantial evidence undermining the State's explanations for its strikes and an invaluable context in which to assess the credibility of those reasons.

As this Court was at pains to point out in *Miller-el*:

> Although the move from *Swain* to *Batson* left a defendant free to challenge the prosecution without having to cast *Swain*'s wide net, the net was not entirely consigned to history, for *Batson*'s individualized focus came with a weakness of its own owing to its very emphasis on the particular reasons a prosecutor might give. If any facially neutral reason sufficed to answer a *Batson* challenge, then *Batson* would not amount to much more than *Swain*. Some stated reasons are false, and although some false reasons are shown up within the four corners of a given case, sometimes a court may not be sure unless it looks beyond the case at hand. Hence

> *Batson*'s explanation that a defendant may rely on "all relevant circumstances" to raise an inference of purposeful discrimination. 476 U.S., at 96-97, 90 L. Ed. 2d 69, 106 S. Ct. 1712.

Miller-el v. Dretke, 545 U.S. 231, 239-40 (2005).

This mode of analysis is to be contrasted with the approach taken by the Louisiana Supreme Court in *Dressner*:

> However, to argue previous capital convictions and death sentences originating from Jefferson Parish have been reversed on racial discrimination injury selection, *see State v. Harris*, 01-0408 (La. 6/21/02), 820 So.2d 471 and *Snyder v. Louisiana*, 552 U.S. 472, 128 S.Ct. 1203, 1207, 170 L.Ed.2d 175 (2008), does not lead to the logical conclusion the same happened in the present case. Here, the State gave its reasons on the record for excusing jurors, and the district court deemed those reasons race-neutral. Thus, even accepting appellate counsel's premise the Jefferson Parish District Attorney's Office has historically shown a racial bias in selecting juries, there must be some demonstrable proof such was the case in the present trial for defendant's argument to succeed. Yet, in all of the *Batson* challenges exercised in defendant's capital trial and reproduced in this appendix, supra, the State gave its reasons on the record for excusing the jurors, and in every challenge, the district court ruled those reasons race-neutral,

> suggesting a clear intent on the part of the current prosecutors to distance themselves from the errors of their office in the past. Notwithstanding any historical precedent in Jefferson Parish to the contrary, we find no racial discrimination tainted jury selection in the instant case.

State v. Dressner, Pet. App. B at 134A-35A.

Instead of looking beyond the four corners of a case to determine whether stated reasons are false, the Louisiana Supreme Court determines that the stated reasons are not false so that it does not have to look beyond the four corners of the case.

This approach is in direct conflict with this Court's holdings and provides a mode of analysis that renders historical and statistical evidence wholly irrelevant.

Indeed, in *Dressner*, it led the Louisiana Supreme Court to the extraordinary conclusion that the prosecutors, who used seven of their nine challenges to remove African Americans from the jury, had by doing so turned over a new leaf and distanced themselves from the historical practice of discrimination documented by petitioner.

The Louisiana Supreme Court's approach to historical evidence in *Dressner* has an analogue in their treatment of statistical patterns of discrimination appearing within cases. Once again, the Court considers the offered explanations in isolation and finding them race neutral, determines that the statistical

pattern is therefore meaningless. This analysis was deployed when the court reversed *Batson* relief by an intermediate appellate court in *Jacobs*:

> The appellate court found the state used seven of the eight peremptory challenges exercised to remove non-white prospective jurors. From a purely statistical perspective, the court of appeal found the state used 87% of its peremptory strikes to challenge non-white prospective jurors, in a venire where non-white prospective jurors comprised less than 19% of the prospective jurors . . . However, we have more than a bare statistical viewpoint to gauge the appropriateness of the peremptory challenges in this case. For three of those peremptory challenges, the appellate court found there was no valid *Batson* claim that would invalidate the strike, . . . [O]ur review of the two peremptory challenges which the court of appeal determined were motivated by a racially-discriminatory intent cannot be supported as such. Consequently, we have found that, after a comprehensive review of these issues, five of the seven state peremptory challenges of non-white prospective jurors did not evince a racially-discriminatory intent. Thus, the statistical argument fails to have merit upon further inquiry.

Jacobs, 32 So. 3d at 236; *see also State v. Dressner* at Pet. App. B, at 93A-94A (discounting statistical evidence because "a review of the voir dire record as a whole indicates the State articulated race and

gender-neutral reasons for each of the eight challenges about which defendant now complains.").

Amicus Curiae will not repeat the overwhelming evidence of a history and pattern of discrimination offered by Petitioner in this case and referred to previously by *amici* in its brief in *Snyder*. It is worth noting however that the grave issues of racial discrimination throughout Louisiana's justice system, specifically when it comes to jury service, have not diminished since *Snyder*. For example, in a recent capital case in Caddo Parish, a juror described the indignity of having to walk past a confederate flag to enter the courthouse:

> Juror Staples: You speak of justice here in these, you call these halls of justice or the courthouse, this is the place where justice is administered and so on. I came to Shreveport in 1975. Okay. There was an issue some years back, I don't mean to get off the subject, but I guess it would be considered also in regards to say the law, in front of the courthouse, the Confederate flag flies. Okay. This is a symbol of the most, to me, one of the most heinous crimes ever committed to another member of the human race, and I just don't see how you could say that, I mean, you're here for justice, and then again you overlook this great injustice by continuing to fly this flag which continues to say put salt

> in the wounds of say people of color, I don't buy it. I don't buy it.[25]

Louisiana is by no means the only state still grappling with the problem of race discrimination during jury selection. A recent report by the Equal Justice Initiative documents the persistent and widespread failure to protect potential jurors from racial discrimination.[26]

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[25] Juror Carl Staples, *State of Louisiana v. Felton Dorsey*, No. 2010-KA-0216, Record at 6036-6037, Appeal from Conviction and Death Sentence Imposed, 1st JDC District Ct. No. 251,406 (appeal pending). For a description of the historical context of the flag's placement at the courthouse and the dangers posed by its presence, see Cecelia Trenticosta & William C. Collins, *Death and Dixie: How the Courthouse Confederate Flag Influences Capital Cases in Louisiana*, 27 Harv. J. Racial & Ethnic Just. (forthcoming 2011), *available at* http://ssrn.com/abstract=1734397 (arguing that the flag endangers due process rights and privileges and immunities of national citizenship in criminal proceedings). The continued presence of confederate symbols adorning Louisiana courthouses is also documented in "Race and Jury Selection," Equal Justice Initiative at http://www.eji.org/eji/raceandpoverty/juryselection (last viewed January 4, 2011).

[26] "Illegal Racial Discrimination in Jury Selection: A Continuing Legacy," Equal Justice Initiative, August 2010, available at http://eji.org/eji/files/62510%20Edited%20Tutwiler%20version%20Final%20Report%20from%20printer%20online.pdf (last viewed January 4, 2011).

IV. Trial court scrutiny has not improved and appellate review has only become more deferential in the wake of *Snyder*

In order to provide for the meaningful application of *Batson* in Louisiana following *Snyder*, it was important for the Louisiana courts to take two important points from the decision. First, that trial courts are expected to carefully scrutinize the reasons offered in response to a *Batson* challenge and second, that appellate courts are not to rubber stamp trial court findings.

Unfortunately, the post-*Snyder* jurisprudence does not demonstrate this shift. Trial courts continue to engage in superficial analysis directed simply to satisfying the step two requirement of race neutrality.[27] And even the most implausible reasons are accepted without demurrer and, as in *Dressner*, efforts to test or challenge those reasons are rebuffed.[28]

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[27] *For example, see Wilson*, 28 So. 3d at 403, 406 (following the prosecutor's offer of race neutral reason for a challenged strike, trial judge simply indicated "alright" and listed his own problems with the prospective juror, and subsequently responded to the defense's *Batson* objection, noting that the number of state strikes against African-Americans "does not show a pattern, it just shows that there is, you know, more African Americans on this top panel.").

[28] *For example, see Collins*, 12 So. 3d at 1079-80 (Even though both the trial and appellate courts declined to find that the justification that the prosecutor simply forgot to ask the juror any questions during voir dire was genuine and credible

(Continued on following page)

Similarly, appellate courts continue to defer to trial court rulings, ignoring many factors that bear on the credibility of the state's race neutral reasons. In addition to history and statistics, mentioned above, other factors include: the passage of time between the initial strike and the prosecutor's offer of race neutral justification,[29] and the existence of similarly situated comparators.[30]

Despite the fact that *Snyder* was the second time that this Court has intervened to reverse a trial court's step three finding, it has come to stand in Louisiana for the proposition that appellate courts must defer virtually completely to trial courts.

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they ruled that at the point the *Batson* objection was lodged, the prosecution had only stricken two African-American jurors.).

[29] *Horn*, 2010 La. App. LEXIS 1502.

[30] *Brastfield*, 3 So. 3d at 11 (Prosecution explained its failure to strike similarly situated white juror by noting that the juror was a lawyer and the prosecutor never struck lawyers. However, the prosecutor only developed this justification in response to the defense's observation that the prosecution had failed to strike a juror who was similarly situated with regard to jury service.).

CONCLUSION

The lamentable fact is that following the decision in *Snyder*, *Batson* continues to fail in its goal of protecting minority jury participation in Louisiana. Indeed, the Fourteenth Amendment in Louisiana presently appears more successful in protecting white prospective jurors from being struck.

The wrongheaded analysis of historical and statistical evidence in Louisiana, the superficial analysis by trial courts and the ultra-deferential review by appellate courts in Louisiana have stripped *Batson* of its purpose. The *Dressner* case provides a fitting vehicle to address these issues not least because the prosecutor in *Dressner* (and *Jacobs*) has subsequently been elected to the position of District Court judge in Jefferson Parish and is now called upon to rule upon *Batson* challenges within the framework described by the Louisiana Supreme Court.

In short, in the absence of intervention by this Court there is little prospect that matters will improve.

Respectfully submitted,

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